

REMARKS

The Office Action mailed January 14, 2003 has been received and the Examiner's comments carefully reviewed. Claims 35, 39-41, and 54 have been allowed. Applicants thank the Examiner for this notification. The specification has been amended to update the claimed priority information. Applicants have included herewith a document entitled, "VERSION WITH MARKINGS TO SHOW CHANGES MADE" to indicate how the specification has been amended. No new subject matter has been added. Claims 22-46 and 48-55 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §102

I. Claims 22-34, 36-38, 42, 43, 45, 46, 48-53, and 55

The Examiner rejected claims 22-34, 36-38, 42, 43, 45, 46, 48-53, and 55 under 35 U.S.C. §102(e) as being anticipated by Blach et al. (U.S. Patent 6,352,548). Applicants respectfully traverse these rejections.

The Examiner applied Blach as prior art by asserting that the rejected claims are not afforded the filing date of the parent case because the parent case did not disclose the particulars of the use of the device to treat the specific maladies included in the rejected claims. Applicants submit that all of the claimed maladies are supported by the parent case.

Applicants note that the present application is a continuation application; and that none of the present claims include new subject matter not support by the parent application. Nonetheless, Applicants have provided evidence of support in the parent application for each of the limitations that the Examiner asserts is not supported.

Support for each of the maladies recited by the claims is found in the specification of the parent application. For example, on page 3, lines 9-11, the parent application recites: "[s]ome experts have theorized that exercise induced pulmonary hemorrhage (EIPH) in performance horses is caused by asphyxia . . ." On page 8-9, lines 21-2 the parent application recites: "[i]t is foreseen that the devices and methods of the invention may be particularly beneficial in horses for reducing the severity or affect(s) of laryngeal hemiplegia, chronic obstructive pulmonary disease (COPD) or exercise related pathologies such as myositis, dorsal displacement of the soft palate (DDSP), or exercised induced

pulmonary hemorrhage (EIPH) or "bleeding".' On page 29-30, lines 22-1 the parent application recites: " . . . the inventors foresee use of an NSD to reduce the chance of exercise induced pulmonary hemorrhage (EIPH) or "bleeders".' Further support is found in the parent's originally filed claims 13 and 19.

With respect to the reduction in impedance recited by the claims, support is found in the parent application, for example, on page 4, lines 9-11 ("a nasal support device (NSD) disclosed herein can reduce inspiratory air flow impedance by at least about 5-10%"); on page 29, lines 13-15 ("it is believed that some embodiments of an NSD as described herein will provide at least about 5-10% reduction in inspiratory impedance, in some embodiments at least about 15-25%, and in some embodiments over a 25% reduction"); and in originally filed claim 18.

Because the subject matter of each of the present claims is supported by the parent application, the present claims are afforded the benefits of the parent's filing date. The parent was filed on February 4, 1998, prior to the filing date of Blach (August 23, 1999). Applicants respectfully request that the rejections of claims 22-34, 36-38, 42, 43, 45, 46, 48-53, and 55 be withdrawn.

II. Claims 22-29, 36-38, 42-46, and 55

The Examiner also rejected claims 22-29, 36-38, 42-46, and 55 under 35 U.S.C. §102(e) as being anticipated by Stratton (U.S. Patent 6,228,101). Applicants respectfully traverse these rejections.

The Examiner likewise based this rejection upon the assertion that the rejected claims are not afforded the filing date of the parent case because the parent case did not disclose the particulars of the use of the device to treat the specific maladies included in the rejected claims. In light of the above comments, Applicants submits that all of the claimed maladies are disclosed in the specification of the parent application.

Because the subject matter of each of the present claims is supported by the parent, the present claims are afforded the benefits of the parent's filing date. The parent was filed on February 4, 1998, prior to the §102(e) date of Stratton (October 5, 1998). Applicants respectfully request that the rejections of claims 22-29, 36-38, 42-46, and 55 be withdrawn.

III. Claim 37

The Examiner further rejected claim 37 under 35 U.S.C. §102(e) as being anticipated by Derksen (U.S. Patent 6,288,037). Applicants respectfully traverse this rejection.

As previously discussed, the respiratory condition recited in claim 37 is afforded the benefits of the parent's February 4, 1998 filing date, which is prior to the filing date of Derksen (July 21, 1999). Applicants respectfully request that the rejection of claim 37 be withdrawn.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 36, 38, and 42-44 under 35 U.S.C. §103(a) as being patentable over Derksen (U.S. Patent 6,228,037). Applicants respectfully traverse this rejection.

As previously discussed, each of the recited limitations recited in claims 36, 38, and 42-44 is support by the parent application. Because each of the claims is afforded a filing date earlier than the filing date of Derksen, Applicants respectfully request withdrawal of this rejection.

Allowable Subject Matter

The Examiner indicated that claims 35, 39-41, and 54 were allowed. Applicants thank the Examiner for this notification.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 22-46 and 48-55) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed

telephone number if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

MERCHANT & GOULD P.C.
P. O. Box 2903
Minneapolis, Minnesota 55402-0903
612.332.5300

Date March 7, 2003

Karen A. Fitzsimmons
Karen A. Fitzsimmons
Reg. No. 50,470
KAF:PSTtdm

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Specification

The paragraph on page 1, under the heading CROSS-REFERENCE TO RELATED APPLICATIONS has been replaced with the following paragraph:

The present application is a continuation of U.S. Serial No. 09/018,603, filed February 4, 1998, now U.S. Patent No. 6,033,422, which is a continuation-in-part of U.S. Serial No., 08/843,741, filed April 21, 1997, now U.S. Patent No. 5,913,873, the entire disclosure of each of these applications being incorporated herein by reference.